

AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 1022

Introduced by Senator Perata

February 21, 2003

An act to add ~~Section 1788.18 to Title 2.97 (commencing with Section 1812.700) to Part 4 of Division 3 of the Civil Code~~, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1022, as amended, Perata. Debt collectors.

Existing law prohibits certain actions by debt collectors in connection with the collection of consumer debts.

~~This bill would authorize consumers to record their conversations with debt collectors. The bill would require debt collectors to inform consumers of that authorization when the debt collector has a conversation with a consumer or provides a written instrument to a consumer.~~

This bill would require debt collectors to provide notice to consumers, with the first notice sent to the consumer in connection with the collection of a debt, that sets forth the consumer's rights, as specified, under the federal Fair Debt Collection Practices Act. A debt collector who fails to provide that notice would be liable for damages and a civil penalty, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) The federal government provides little oversight of the debt collection industry.

(b) While existing law imposes various responsibilities on debt collectors, the State of California no longer requires the licensure of debt collectors and collection agencies as it did pursuant to Chapter 8 (commencing with Section 6850) of Division 3 of the Business and Professions Code before those provisions became inoperative.

~~SEC. 2. Section 1788.18 is added to the Civil Code, to read: 1788.18. (a) Notwithstanding Sections 631 and 632 of the Penal Code, consumers may record all conversations with a debt collector.~~

~~(b) At the beginning of a conversation with a consumer, a debt collector shall inform the consumer, in the language of the conversation, of the consumer's right under California law to record the conversation.~~

~~(c) Every written instrument provided to a consumer by a debt collector shall state that the consumer has the right under California law to record any conversation with the debt collector.~~

SEC. 2. Title 2.97 (commencing with Section 1812.700) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 2.97. CONSUMER COLLECTION NOTICE

1812.700. (a) In addition to the requirements imposed by Article 2 (commencing with Section 1788.10) of Title 1.6C, third-party debt collectors subject to the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall provide a notice to consumers in at least 12-point type that shall include the following description of consumer rights under the federal Fair Debt Collection Practices Act:

“The following are some of your rights under the federal Fair Debt Collection Practices Act. If the debt collector who contacts you violates any of these rights please contact the Attorney General or the Federal Trade Commission.

- 1
- 2 *1. Collectors may not contact you before 8 a.m. or after 9 p.m.*
- 3 *2. Collectors may not harass you. They may not use threats of*
- 4 *violence, use obscene language, or repeatedly use the telephone to*
- 5 *annoy you.*
- 6 *3. If you dispute the debt in writing to the collector, the collector*
- 7 *must verify the debt before contacting you again.*
- 8 *4. Collectors may not use false or misleading statements, such as*
- 9 *implying that he or she is a government representative.*
- 10 *5. Collectors may not call you at work if they know or have reason*
- 11 *to know that you may not receive personal calls at work.*
- 12 *6. For the most part, collectors may not tell another person, other*
- 13 *than your attorney, about your debt. Collectors may only contact*
- 14 *another person to confirm your location.*
- 15 *7. Collectors may not state that you might be arrested if you do not*
- 16 *pay your debt.”*
- 17 *(b) The notice shall be included with the first notice sent to the*
- 18 *consumer in connection with collecting the debt.*
- 19 *(c) If a language other than English is principally used in the*
- 20 *initial oral contact with the consumer, the notice shall be provided*
- 21 *to the consumer in that language.*
- 22 *1812.701. (a) Any debt collector who violates this title with*
- 23 *respect to any debtor shall be liable in an amount equal to the sum*
- 24 *of any actual damages sustained by the debtor as a result of the*
- 25 *violation.*
- 26 *(b) Any debt collector who willfully and knowingly violates this*
- 27 *title with respect to any debtor shall, in addition to actual damages*
- 28 *sustained by the debtor as a result of the violation, be liable for a*
- 29 *penalty in an amount determined by the court, which may not be*
- 30 *less than one hundred dollars (\$100) nor greater than one*
- 31 *thousand dollars (\$1,000).*
- 32 *(c) In any action to enforce any liability under this title, the*
- 33 *prevailing plaintiff shall be entitled to costs of the action.*
- 34 *Reasonable attorney’s fees, which shall be based on time*
- 35 *necessarily expended to enforce the liability, shall be awarded to*
- 36 *a prevailing debtor. Reasonable attorney’s fees may be awarded to*
- 37 *a prevailing creditor upon a finding by the court that the debtor’s*
- 38 *prosecution or defense of the action was not in good faith.*

O